

On August 22, 2011, Jones filed another application for conditional release. *Id.* The State did not file an objection to the application, and on September 28, 2011, the court entered an order and judgment for conditional release. *Id.* at 10. In August 2013, Jones filed an application to amend his conditional release, and the state court entered an order and judgment amending Jones’s conditional release. *Id.* Jones sought to amend his conditional release again in April 2016, *id.* at 9, but the record does not reflect that the state court ruled on that motion, *see doc.* 1-1. On January 22, 2019, Jones filed another application to amend his conditional release, which the court denied for several reasons, including failure to comply with the procedural requirements of Missouri Revised Statute § 552.040. *Id.* at 7.

On April 24, 2020, Jones filed an application to extend his conditional release, which the state court granted. *Id.* at 6; *see also id.* at 15–20. Upon review, the state court found that Jones was not likely to commit another violent crime because of his mental illness and that he “possess[ed] the capacity to appreciate the criminality of the violent crime . . . and the capacity to conform his conduct to the” law. *Id.* at 15. Although granting the application to extend conditional release, the court imposed 13 conditions on his release. *Id.* at 16–20. The first condition permitted Jones to reside in a “Host Home or an Individualized Supported Living . . . placement.” *Id.* at 16.

Most recently, on March 19, 2021, Jones filed a “petition for amended conditional release to supervised independent to live in my own place in St[.] Louis, Missouri.” *Id.* at 5. The state court appointed Jones a public defender, who filed an amended petition on April 29, 2021. *Id.* It appears that the amended petition sought unconditional release because, on June 15, 2023, the State filed a motion to dismiss Jones’s application for unconditional release. *Id.* at 4. As of

August 17, 2023, the date the state-court docket sheet was prepared, the state court had not yet ruled on this application. *Id.*

On December 26, 2023, Jones filed his section 2254 petition on a Court-provided form. Doc. 1. Although Jones has attempted to complete the form, he seems to have limited knowledge of the procedural posture of any underlying application for amendment of his conditional release. The only information provided by Jones is a copy of the docket sheet in his state-court case and a copy of the May 26, 2020 judgment and order that extended his conditional release. Doc. 1-1 at 15–20. Jones’s mailing address is listed as 7 South Joyce Ellen Way, which is a private residence in St. Peters, Missouri. While it seems Jones resides in a private residence, he has not provided any information regarding the current status of his conditional release or his application for unconditional release.

II. Standard

Upon the filing of a section 2254 petition, the Court must examine the petition to determine “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in” this Court. Rule 4 of the Rules Governing Section 2254 cases. If it does, the Court must dismiss the petition. *Id.*

III. Discussion

In his petition, Jones asks the Court to release him from the state court and the Department of Mental Health. Doc. 1 at 12. To the extent Jones seeks relief under section 2254 based on his state-court petition for unconditional release, the Court must dismiss his petition because he has not exhausted his available state remedies.

Section 2254 authorizes the Court to entertain a petition “of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the

Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). As relevant here, section 2254 prohibits the Court from granting a petition “unless it appears that . . . the applicant has exhausted the remedies available in the courts of the State.” 28 U.S.C. § 2254(b)(1)(A). The exhaustion requirement applies with equal force when a habeas petitioner seeks to challenge state custody pursuant to a civil commitment. *See Beaulieu v. Minnesota*, 583 F.3d 570, 575 (8th Cir. 2009). “To satisfy the exhaustion requirement, a person” civilly committed “must apply for release under [Missouri Revised Statute § 552.040] before filing a petition for a writ of habeas corpus.” *Kolocotronis v. Holcomb*, 925 F.2d 278, 279 (8th Cir. 1991) (citing *Cyronne-DeVirgin v. Missouri*, 341 F.2d 568, 570–71 (8th Cir. 1965)). If the state court denies that application, the person must appeal to the Missouri Court of Appeals. *Id.* (citing *Jones v. Ritterbusch*, 548 F. Supp. 89, 90 (W.D. Mo. 1982)). But if the Missouri Court of Appeals denies relief, a person need not request transfer to the Missouri Supreme Court for the Court to consider all state remedies exhausted. *Grass v. Reitz*, 643 F.3d 579, 585 (8th Cir. 2011) (citing *Taylor v. Roper*, 561 F.3d 859, 861 n.2 (8th Cir. 2009)).

Here, Jones included as an exhibit a state-court docket sheet that shows he has applied for unconditional release under section 552.040 in the state court. Doc. 1-1 at 5. But the docket sheet does not reflect that the state court has ruled on that application. *See* doc. 1-1. The Court attempted to review MissouriCase.net to determine if the state court has issued a ruling. But the level three security on Jones’s case prevented the Court from doing so. Even assuming the state court has issued an adverse ruling, Jones must appeal to the Missouri Court of Appeals before he can file a section 2254 petition in this Court. Jones has not alleged that he appealed to the Missouri Court of Appeals and, based on the Court’s independent review of Missouri Case.net, it

does not appear that Jones has. The Court therefore concludes that Jones has failed to exhaust his state court remedies and dismisses Jones's petition.

IV. Conclusion

The Court grants Jones's [2] Motion for Leave to Proceed In Forma Pauperis. The Court denies and dismisses without prejudice Jones's [1] Application for Writ of Habeas Corpus. Finally, the Court denies as moot Jones's motions for appointment of counsel, docs. 3, 8, 9. A separate Order of Dismissal accompanies this Memorandum and Order.

V. Certificate of appealability

For the Court to issue a certificate of appealability, Jones must make a substantial showing that he suffered the denial of a constitutional right. *See Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997). A substantial showing is one indicating that reasonable jurists could debate the issues, a court could resolve the issues differently, or the issues deserve further proceedings. *Id.* Jones has made no such showing here. Thus, the Court does not issue a certificate of appealability.

So ordered this 29th day of May 2024.



STEPHEN R. CLARK
CHIEF UNITED STATES DISTRICT JUDGE